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MONTANA LEGISLATIVE HISTORY

Chapter 129 1993

Bill H 380 S _____ Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Natural Resources		
Hearing Date(s)	2/10	✓ C	Hearing Date(s)	3/5	✓ C
	2/13	✓ C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

Chapter Page

BOARD OF EXAMINERS IN OPTOMETRY; REVISING QUALIFICATION REQUIREMENTS, RECIPROCITY, AND CONTINUING EDUCATION REQUIREMENTS FOR THE PRACTICE OF OPTOMETRY; REVISING THE DISCIPLINARY AUTHORITY OF THE BOARD OVER HOLDERS OF CERTIFICATES OF REGISTRATION; AMENDING SECTIONS 2-15-1846, 37-10-101, 37-10-201, 37-10-301, 37-10-302, 37-10-303, 37-10-308, AND 37-10-311, MCA; AND PROVIDING EFFECTIVE DATES 312

122 *(Senate Bill No. 241; B. Brown)* AN ACT EXTENDING THE TAPROOM BEER SALE EXEMPTION TO FOREIGN BREWERS; AMENDING SECTION 16-3-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 317

123 *(Senate Bill No. 250; Yellowtail)* AN ACT CONFORMING THE OPEN MEETING LAW TO THE INTERPRETATION OF THE PUBLIC PARTICIPATION AND RIGHT TO KNOW PROVISIONS OF THE MONTANA CONSTITUTION BY REMOVING THE EXCEPTION FOR COLLECTIVE BARGAINING STRATEGY MEETINGS; AND AMENDING SECTION 2-3-203, MCA 318

124 *(Senate Bill No. 273; Stang)* AN ACT REMOVING THE PROHIBITION AGAINST A POLICE OFFICER WORKING IN ANOTHER DEPARTMENT OF A THIRD-CLASS CITY OR A TOWN; PROVIDING A RESTRICTION; AMENDING SECTION 7-32-4114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 319

125 *(Senate Bill No. 328; Hertel)* AN ACT CLARIFYING THAT THE LIEN AVAILABLE FOR SPRAYING OR DUSTING GRAINS OR CROPS INCLUDES BOTH AERIAL AND GROUND APPLICATION AND THE USE OF FERTILIZER; AMENDING SECTION 71-3-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 319

126 *(Senate Bill No. 355; Harding)* AN ACT MAKING PERMANENT THE INCREASE IN FEE FOR A MOTORBOAT CERTIFICATE OF NUMBER; ALLOCATING THE FEE INCREASE TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ACQUIRE AND MAINTAIN MARINE SEWAGE PUMPOUT EQUIPMENT AND OTHER BOAT FACILITIES; AMENDING SECTION 23-2-512, MCA; AND PROVIDING AN EFFECTIVE DATE 320

127 *(House Bill No. 197; Quilici)* AN ACT DESIGNATING SILVER BOW COUNTY AND DEER LODGE COUNTY AS A CULTURAL HERITAGE AREA; REQUIRING THE DEPARTMENT OF TRANSPORTATION, AS FUNDS BECOME AVAILABLE, TO ERECT AND MAINTAIN SIGNS IDENTIFYING THE CULTURAL HERITAGE AREA; PROVIDING A STATUTORY APPROPRIATION; AND AMENDING SECTION 17-7-502, MCA 324

128 *(House Bill No. 377; Barnett)* AN ACT CLARIFYING THAT THE COMMISSIONER OF POLITICAL PRACTICES SHALL PROVIDE CANDIDATES WITH THE CODE OF FAIR CAMPAIGN PRACTICES; ELIMINATING THE REQUIREMENT THAT THE COMMISSIONER OF POLITICAL PRACTICES PROVIDE COPIES OF THE CODE OF FAIR CAMPAIGN PRACTICES TO THE SECRETARY OF STATE, COUNTY REGISTRARS, AND CITY AND TOWN CLERKS; AND AMENDING SECTION 13-35-302, MCA 326

129 *(House Bill No. 380; Ewer)* AN ACT AMENDING THE AIR QUALITY PERMIT REQUIREMENTS FOR INCINERATORS; REQUIRING AN AIR QUALITY PERMIT FOR BOILERS AND INDUSTRIAL FURNACES; ELIMINATING AN EXEMPTION FOR INCINERATORS THAT BURN

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130 *(Senate Bill No. 52; Devlin)* AN ACT ALLOWING THE INTEREST EARNED ON COUNTY ROAD FUND OR COUNTY BRIDGE FUND MONEY TO BE CREDITED TO THE ROAD FUND OR BRIDGE FUND; AMENDING SECTION 7-6-204, MCA; AND PROVIDING AN EFFECTIVE DATE 330

131 *(Senate Bill No. 86; Jergeson)* AN ACT ALLOWING THE STATE TREASURER TO USE OUT-OF-STATE FINANCIAL INSTITUTIONS FOR SERVICES THAT ARE NOT AVAILABLE THROUGH IN-STATE FINANCIAL INSTITUTIONS; AND AMENDING SECTION 17-6-101, MCA 331

132 *(Senate Bill No. 129; Doherty)* AN ACT ELIMINATING THE REQUIREMENT THAT AN ATTEMPT BE MADE TO IDENTIFY THE DRIVER OF A VEHICLE VIOLATING SCHOOL BUS REGULATIONS; AND AMENDING SECTION 61-8-351, MCA 332

133 *(Senate Bill No. 178; B. Brown)* AN ACT EXTENDING CERTAIN BUDGET REPORTING PERIODS FOR SCHOOL TRUSTEES AND COUNTY SUPERINTENDENTS; AMENDING SECTIONS 7-6-4407, 20-5-307, 20-5-312, 20-6-412, 20-7-705, 20-9-131, 20-9-141, 20-9-142, 20-9-211, 20-9-212, 20-9-213, 20-9-439, 20-9-501, 20-9-503, 20-9-506, 20-10-144, 20-10-146, AND 20-10-147, MCA; AND PROVIDING AN EFFECTIVE DATE 333

134 *(Senate Bill No. 207; Wilson)* AN ACT REVISING THE MONTANA WAGE PROTECTION LAWS; PROVIDING FOR PAYMENT OF WAGES BY ELECTRONIC FUNDS TRANSFER OR SIMILAR MEANS OF DIRECT DEPOSIT; ELIMINATING THE REQUIREMENT THAT AN EMPLOYER PAY INTEREST ON UNPAID WAGES DUE AN EMPLOYEE; REVISING THE HEARING PROCESS FOR A WAGE CLAIM; AND AMENDING SECTIONS 39-3-204, 39-3-206, 39-3-208, AND 39-3-216, MCA 349

135 *(Senate Bill No. 234; Harp)* AN ACT CLARIFYING THE CONFIDENTIALITY OF CORPORATION LICENSE OR INCOME TAX RECORDS; AMENDING SECTIONS 15-31-406 AND 15-38-109, MCA; AND REPEALING SECTIONS 15-31-507 AND 15-31-508, MCA 351

136 *(Senate Bill No. 279; Swysgood)* AN ACT ESTABLISHING ADDITIONAL SURVEY REQUIREMENTS FOR SURVEYS AFFECTING IRRIGATION DISTRICTS; LIMITING THE RESPONSIBILITY OF IRRIGATION DISTRICTS FOR CERTAIN IRRIGATION WATER DISTRIBUTION CHANGES; AMENDING SECTIONS 76-3-401, 76-3-402, AND 85-7-1922, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 353

137 *(Senate Bill No. 306; Hertel)* AN ACT REVISING STAGGERED TERMS FOR SCHOOL BOARD TRUSTEES; PROVIDING AN EXCEPTION FOR FILLING A TRUSTEE VACANCY; AND AMENDING SECTION 20-3-302, MCA 355

138 *(Senate Bill No. 349; Christiaens)* AN ACT ESTABLISHING A 10-DAY PERIOD WITHIN WHICH A TENANT IS REQUIRED TO ANSWER A LANDLORD'S COMPLAINT AND SUMMONS IN A LANDLORD'S ACTION FOR UNLAWFUL DETAINER; AND AMENDING SECTION 70-27-115, MCA 357

139 *(Senate Bill No. 369; Rea)* AN ACT ALLOWING THE SALE AND USE OF CERTAIN PESTICIDES FOR UP TO 6 YEARS FROM THE DATE THAT DISTRIBUTION FROM THE REGISTRANT, MANUFACTURER, FORMULATOR, OR DISTRIBUTOR IS TERMINATED; AMENDING SEC-

2/02	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/12	HEARING		
2/17	TABLED IN COMMITTEE		

HB 380 INTRODUCED BY EWER, ET AL.

AMEND AIR QUALITY PERMIT REQUIREMENTS FOR INCINERATORS

BY REQUEST OF DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

1/28	INTRODUCED		
1/28	REFERRED TO NATURAL RESOURCES		
1/28	FIRST READING		
1/28	FISCAL NOTE REQUESTED		
2/02	FISCAL NOTE RECEIVED		
2/03	FISCAL NOTE PRINTED		
2/10	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	2ND READING PASSED AS AMENDED	87	8
2/22	3RD READING PASSED	95	1
	TRANSMITTED TO SENATE		
3/01	FIRST READING		
3/01	REFERRED TO NATURAL RESOURCES		
3/05	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED		
3/08	2ND READING CONCURRED	48	0
3/09	3RD READING CONCURRED	43	5
	RETURNED TO HOUSE		
3/18	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/18	TRANSMITTED TO GOVERNOR		
3/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 129		
	EFFECTIVE DATE: 03/19/93		

HB 381 INTRODUCED BY RYAN, ET AL.

REQUIRE PROOF OF HUNTER COMPETENCY BY CERTAIN ARMED FORCES MEMBERS AND DEPENDENTS

1/28	INTRODUCED		
1/28	REFERRED TO FISH & GAME		
1/28	FIRST READING		
1/28	FISCAL NOTE REQUESTED		
2/02	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/09	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	2ND READING PASSED	87	10
2/22	3RD READING PASSED	86	13
	TRANSMITTED TO SENATE		
3/02	FIRST READING		
3/02	REFERRED TO FISH & GAME		
3/16	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	48	1
3/19	3RD READING CONCURRED	46	1
	RETURNED TO HOUSE		
3/24	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		

LC 0885/01

House BILL NO. 380

INTRODUCED BY Emer Foster Juneau

BY REQUEST OF THE DEPARTMENT OF Beneke

HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE AIR QUALITY PERMIT REQUIREMENTS FOR INCINERATORS; REQUIRING AN AIR QUALITY PERMIT FOR BOILERS AND INDUSTRIAL FURNACES; ELIMINATING AN EXEMPTION FOR INCINERATORS THAT BURN 200 POUNDS OR LESS PER HOUR; PROHIBITING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FROM ISSUING AN AIR QUALITY PERMIT FOR INCINERATORS, BOILERS, AND INDUSTRIAL FURNACES UNTIL JUNE 1, 1994; AMENDING SECTIONS 75-2-103 AND 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

It is the intent of the legislature that the statutory size cutoff for incinerators that burn 200 pounds or less per hour, as provided for in 75-2-215, be eliminated and that the requirements of 75-2-215 be extended to boilers and industrial furnaces. As a result, the requirements of 75-2-215 would apply to all incinerators and all boilers and industrial furnaces subject to 75-10-406, regardless of size. In order to lessen the burden on the department of health and environmental sciences, the board of health and environmental sciences may provide by rule for general permits that apply to classes or categories of sources subject to the requirements of 75-2-215. The board shall use this authority to the greatest extent possible, consistent with its obligation to protect public health and the environment.

It is also the intent of the legislature to clarify the provisions of 75-2-215 by amending the definitions in 75-2-103. The definition of incinerator contains no reference to end use or economic value of the feed, but rather focuses on the process employed. The definition of solid waste is intended to be more encompassing than the use of that definition elsewhere in Title 75, and the reference to "marketable byproducts" contained in other definitions is intentionally omitted. The overriding purpose of this bill is to protect air quality, public health, and the physical environment, and the legislature does not believe it appropriate to draw distinctions in applicability based upon whether or not the incineration activity is, for example, associated with waste disposal or volume reduction in conjunction with recycling.

It is also the intent of the legislature that a moratorium be placed upon the issuance of air quality permits for incinerators, boilers, and industrial furnaces subject to the requirements of 75-2-215 until June 1, 1994.

The purpose of the moratorium is to provide the board and department time to adopt rules to implement the requirements of 75-2-215.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which are or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(4) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Emission" means a release into the outdoor

atmosphere of air contaminants.

(7) "Hazardous waste" means any material designated as hazardous waste pursuant to Title 75, chapter 10, part 4.

(8) (a) "Incinerator" means any single or multiple chambered combustion device that burns combustible material, alone or with a supplemental fuel or catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of all or any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters burning used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

~~(7)~~(9) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, a subdivision or agency of the state, a trust, an estate, or any other legal entity and includes persons resident in Canada.

(10) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes,

including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, or slash and forest debris regulated under laws administered by the department of state lands."

Section 2. Section 75-2-215, MCA, is amended to read:

"75-2-215. Solid or hazardous waste incineration -- additional permit requirements. (1) A Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person

may not construct, modify, or operate a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406. ~~of any of the following categories until the department has issued an air quality permit pursuant to this chapter, including the conditions provided in this section:~~

~~(a) a new solid or hazardous waste incinerator that is designed to burn more than 200 pounds an hour of solid or hazardous waste; or~~

~~(b)~~ (2) an An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) if: ~~that is designed to burn more than 200 pounds an hour of solid or hazardous waste and that~~

(a) it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content different from its designed or permitted operation; or

(b) it ~~that~~ incinerates or uses as fuel or would incinerate or use as fuel any solid or hazardous waste that changes the nature, character, or composition of its emissions.

~~(2)~~ (3) The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the

department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing ~~incineration~~ emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the permit application or modification;

(b) the public has had an opportunity to review and comment on the permit application or modification; and

(c) the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment.

~~(3)~~(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The board may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or

categories of incinerators and boilers or industrial furnaces.

~~(4)~~(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter."

NEW SECTION. **Section 3.** **Moratorium on issuance of air quality permits for solid or hazardous waste incinerators and boilers or industrial furnaces until rules implementing 75-2-215 have been adopted.** (1) The state of Montana recognizes the importance of providing for the incineration of solid or hazardous waste in a manner that protects Montana's public health, safety, welfare, and environment. The state of Montana is concerned that current state law does not provide adequate protection for the human and physical environment, including impacts to public health, safety, and welfare and property values, from the impacts of solid or hazardous waste incinerator facilities or other facilities that burn hazardous waste-derived fuels.

(2) The department may not issue an air quality permit to a solid or hazardous waste incinerator or boiler or industrial furnace subject to the requirements of 75-2-215 until June 1, 1994, except for:

(a) remedial actions pursuant to Title 75, chapter 10, part 7; or

(b) corrective actions pursuant to 75-10-405(2)(c) or 75-10-416.

NEW SECTION. **Section 4.** Codification instruction. [Section 3] is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 3].

NEW SECTION. **Section 5.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 6.** Effective date. [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **DICK KNOX, CHAIRMAN**, on February 10, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: Reps. Brooke, Fagg, Schwinden, Swanson, Toole.

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 423, HB 318, HB 395, HB 380, HB 434
Executive Action:	Berkeley Pit Resolution, HB 345, HB 417, HB 420, HB 423

HEARING ON HB 423

Opening Statement by Sponsor:

REP. BOB GILBERT, HD 22, Sidney, presented HB 423, which would clarify the hearings procedure of the Tank Release Compensation Board.

HEARING ON HB 380

Opening Statement by Sponsor:

REP DAVID EWER, HD 45, Helena, stated he was carrying this legislation on behalf of the Montana Department of Health and Environmental Sciences (DHES). The legislation affects the current law relating to air quality regulations for incinerators.

Proponents' Testimony:

Jan Sensibaugh, Air Quality Bureau, DHES, testified in support of HB 380 and provided three proposed amendments for consideration. **EXHIBIT 17**

Don Peoples, National Environmental Waste Technology Center (NEWTEC), Butte, testified in support of the legislation but suggested the bill be amended. He stated the moratorium would have a negative impact on the incineration of hazardous waste through high temperature technology. This project is very important to the Butte area, which will be funded with $20 to $25 million in federal funds and is the replacement program for the MHD project. **EXHIBIT 18**

Brian McNitt, Montana Environmental Information Center, stated MEIC supported the passage of HB 380 and noted two separate issues contained in the legislation: incinerators processing under 200 pounds per day and the issue of boilers and industrial furnaces (BIF) in Montana.

Jerome Anderson, Attorney, representing the Holman plant, testified as a neutral proponent to the legislation and supported amending the bill so that facilities covered by BIF regulations could be handled differently. He added the moratorium extension should not be applied to that group. He stated that definition of solid waste goes beyond that which is reasonably proper. He said language should be added to the bill to allow the processing of applications during the moratorium.

Brady Wiseman, Montanans Against Toxic Burning, expressed his organization's support of this bill.

Dave Ross, Montana Audubon, said this bill was needed to establish air and water quality.

Tom Daubert, Ashgrove Cement Company, spoke in support of the legislation and uniform regulations for small and large incinerators.

Aaron Carlson Biledeau, second grader, Montana City School, expressed concern with incinerator burnings.

Rachel Rauesirs, Montana City, stated support for the legislation.

Pamela Carlson, Montana City, testified in support of the HB 380.

Opponents' Testimony:

William Lawrence, Sure-Way Systems of Montana, defined the services provided by his company and testified on the impact this legislation would have on the company. **EXHIBIT 19**

Gordon Bronson, Montana Society of Hospital Engineers, proposed an amendment to HB 380. **EXHIBIT 20**

Don Sterhan, Western Recovery Systems, Inc, stated his company does not oppose strict standards and supported aspects of the legislation, but did oppose management by moratorium.

Questions From Committee Members and Responses:

The committee questioned the expansion of solid waste definition in the bill, the prohibition of air quality permits for incinerators, boilers, or industrial furnaces, the intent of the definition of hazardous waste, and the bill's impact on current industries in Montana, including hospitals.

Closing by Sponsor:

REP. EWER closed by stating he did not support the hospital amendment and felt none of the department's requests were unreasonable. He urged passage of the legislation.

HEARING ON HB 434

Opening Statement by Sponsor:

REP TIMOTHY WHALEN, HD 93, Billings, said the bill extends the current moratorium on the importation of hazardous waste until DHES adopts appropriate rules, and provides for a moratorium exemption to allow for regional "watershed" management.

Proponents' Testimony:

Ted Lange, Northern Plains Resource Council, provided testimony in support of HB 434. **EXHIBIT 21**

REP ROLPH TUNBY, HD 24, Plevna, distributed an amendment to HB 434 and expressed his support for the legislation.

Terry Cosgrove, Fallon County, stated the county can support the bill with the proposed amendments.

Don Peoples, National Environmental Waste Technology Center, Butte, stated he could back the bill if it were amended to include language proposed for HB 380 impacting his company.

EXHIBIT 11
DATE 2-10-93
HB 380

Montana Department of Health and Environmental Sciences
Air Quality Bureau

Testimony on HB 380

Before the Natural Resources Committee of the Montana House of Representatives : By Jan P. Sensibaugh of the Air Quality Bureau, MDHES

A bill to amend the air quality permit requirements for incinerators and BIFs.

Mr. Chairman, members of the committee, my name is Jan Sensibaugh and I represent the Department of Health and Environmental Sciences. HB 380 makes changes to the department's air quality permitting authority for solid and hazardous waste incinerators to solve some of the problems experienced regarding permitting of incineration facilities under this statute. The changes include: elimination of the 200 lb/hour input size permitting threshold; definitions of incinerator, solid waste and hazardous waste; specific reference to boilers and industrial furnaces; and a moratorium on the issuance of permits under this statute until June 1, 1994.

The reason for eliminating the 200 lb/hour input size and requiring permitting of all new incinerators is to assure that all incineration projects are subject to an appropriate level of review before they are constructed. The department has found that there are differences of opinion on how to apply the 200 lb/hour limit and that facilities are designing their incinerators, including those for medical waste, to fall just below the 200 lb/hour input size to avoid air quality permitting. Since the public is

sensitive about impacts on public health and the environment from incinerators, the department must be able to analyze potential air quality impacts from all proposed incinerators so that concerns raised by the public are adequately responded to.

Since elimination of the size cut-off will bring under regulation small incinerators of a similar type, such as grocery store incinerators, the legislation includes language allowing the department to issue general permits for specific size and type categories of incinerators. In this way, once a general permit has been developed, a facility would only need to demonstrate that it meets the requirements for a general permit and would not need to go through extensive individual permitting review. The general permit requirements would most likely include, among other things, size restrictions, and waste and emission type limitations.

In order to clarify which sources these permitting requirements apply to, definitions of incinerator, solid waste and hazardous waste have been included in the amendments.

-- The definition of incinerator focuses on the type of equipment and the combustion process used.

-- The solid waste definition is similar to but more encompassing than that used in other solid waste statutes. Reference to marketable byproducts is omitted since the reason for incineration is not applicable to permit review in relation to protecting air quality, public health and the environment.

-- The definition of hazardous waste is the same as that used in the hazardous waste statute.

Although the department believes that boilers and industrial furnaces are included under the existing statute, to eliminate any confusion, the changes specifically include review of these facilities.

One of the public's concerns is that the department will issue permits for facilities before adequate rulemaking, which includes public participation, has been completed. Therefore, a moratorium on the issuance of air quality permits until June 1, 1994 has been included. During that time, rules implementing the law will be developed and adopted. The same exemptions for cleanup of underground storage tanks and Superfund sites that are contained in the current moratorium statute, which expires in October 1993, are incorporated in this bill.

HB 380 clarifies the department's permitting authority for solid and hazardous waste incinerators and boilers and industrial furnaces and allows for development of a program that will protect public health and the environment.

Thank you for the opportunity to comment. I would be happy to answer any questions.

EXHIBIT 17
DATE 2-10-93
HB 380

Amendments to House Bill No. 380
Introduced Bill Copy

Requested by the Department of Health
and Environmental Sciences
For the House Committee on Natural Resources

1. Page 1, line 23.
Strike: "75-10-406"
Insert: "75-10-405"

2. Page 6, line 3.
Strike: "75-10-406"
Insert: "75-10-405"

3. Page 6, line 12.
Strike: "75-10-406"
Insert: "75-10-405"

EXHIBIT 17
DATE 2-10-93
HB 380

EXHIBIT
DATE 2-10-93
HB 380

SURE-WAY SYSTEMS, MONTANA, INC.

PO BOX 899
DEER LODGE, MONTANA 59722
1-800-822-3929

Why Sure-Way requests either a tabling of the moratorium on incinerator licensing in the state (HB380), or an exemption for medical waste incineration from the plan:

Sure-Way Systems, Montana, Inc. is a Montana owned and operated company founded on the principles of sound and environmentally safe disposal of medical waste. Medical waste is our only concern. We do not plan to expand into any other sort of waste management.

At the present time Sure-Way is very small, but has grown in the past two years to subscribe nearly 200 accounts statewide. Our clients include dental and medical offices, clinics, nursing homes, mortuaries, hospitals, and most of the state's PHS Indian hospitals. As the April 1 deadline approaches for compliance with the Infectious Waste Management Act, the company expects an even more active interest in our services on the part of the medical community statewide.

Unlike our larger competitor, Sure-Way does not require that clients reside within a particular service area, nor do we insist that a certain number of clients sign up in a new location to be able to subscribe to our waste removal services. Thus a dentist in Glendive or a hospital in Culbertson can hope to achieve compliance with the Infectious Waste Management Act. Otherwise, many of the non-city clients who subscribe to our service will have no way to legally dispose of infectious waste generated in their facilities.

Sure-Way currently hauls infectious materials to medical waste incinerators in Washington or in North Dakota, incurring heavy trucking and incineration fees which are, naturally, reflected in charges to clients. That cost is, of course passed on to patients and their insurance companies, driving the already high cost of health care and insurance even higher.

Sure-Way's plan had always been to reach a stage of growth after which the company would locate an environmentally friendly and technologically sound incinerator in an area of the state where the impact would be minimal to both nature and the public. This plan would have made profits higher, insuring company security, and would have lowered client costs. The proposed HB380 placing a

moratorium on the issuance of incinerator licensing could very well jeopordize company stability, or at least make profitability so insecure as to weaken Sure-Way irreparably.

Consider the ramifications of the moratorium, not only to this one small company employing six Montana citizens, but also to all Montana physicians, dentists, hospitals and extended care facilities, et. al. What will happen to Sure-Way? Will it be able to continue if the state limits its opportunities to grow? What will happen to clients in remote areas? Will they continue to receive service at a reasonable price if only one giant out-of-state company has a monopoly over infectious waste removal in Montana? How long will states on our borders put up with Montana exporting its all its medical waste to their incinerators and landfills?

Will the moratorium impact the purpose of the Infectious Waste Management Act (75-10-1002)? "The purpose of this part is to protect the public health, safety, and welfare of the citizens of Montana by developing and implementing infectious waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable." Sure-Way clients faced with a cessation of service certainly would not find the resulting pile-up of waste aesthetically pleasing. Nor would it be environmentally acceptable, reasonable or cost-effective to switch their patronage to the other company whose non-pathological and non-chemotherapy waste is autoclaved and goes into landfills in Colorado without significant reduction in volume, while all the rest is incinerated, as required by federal regulation.

The only benefit to Montana, therefore, would be that procrastination in the face of formulation of a bill would result in the failure to face responsibility for Montana's own waste, thus foisting it off on another state. How soon would it be before our neighboring state's hospitality wears thin? Considering Colorado's activist environmental lobby, it would seem unlikely this sticky waste shuffle would remain Montana's secret for long. Involved litigation would probably allow Montana's waste back into Colorado landfills eventually, but how long would it be before the outward flow resumed? Until the waste traffic dispute could be settled, what would happen to the tons of waste produced daily that could not, by Montana law, be legally managed here in Montana? Wholesale storage of any type of waste is not a pretty sight... neither would it be reasonable, cost-effective, aesthetically pleasing, or environmentally acceptable.

Because there are currently laws on Montana's books requiring

handling and disposal of medical waste in an acceptably prudent manner, it seems illogical that the legislature should stand in the way of its own good judgment by preventing this law from being carried out as efficiently and successfully as it is currently being done. Sure-Way therefore requests that if the committee insists on sending the moratorium on as a bill, that an amendment be added to exempt medical waste incineration facilities from such a ban. To do otherwise would be an inefficient and ineffective approach to solving the Montana medical waste dilemma.

It makes no sense to continue to pollute our air, soil and water with out-dated waste management systems for the purpose of "studying the situation." Instead, the best, the newest, the most efficient technology could replace inefficient and possibly dangerous systems. It would be like the Air Quality Board refusing to allow newer, more efficient models of automobiles into the pollution control zone around Missoula until the new technology could be studied to assess benefits. Why should progress have to wait for governmental regulations to catch up? Should the citizens of Montana be deprived of a cleaner, safer environment while a committee ponders?

It is not as if the Air Quality Board has the task of re-inventing the wheel. Incineration technology has been around for a very long time, and regulation has been around nearly as long. Other states have managed to develop reasonable laws which protect both the public and the environment while remaining flexible enough for expanded scientific data and improving technology. Sure-Way has confidence that our legislators have the skill to quickly draw up fair and effective regulations.

Serious and thoughtful choices must be made, rather than knee-jerk responses to hot-topic issues. Such topics are often brought to legislators by those with a particular agenda. It is the duty of Montana's legislators to carefully review facts and weigh benefits to the advantage of all Montanans, rather than to be swept along by the hysteria of the few. In the end, the ability to recognize an issue from a particular agenda may be a key to legislative wisdom, as well as to the state's ability to expand its economy enough to compete healthily on a national level.

EXHIBIT 19
DATE 2-10-93
HB 380

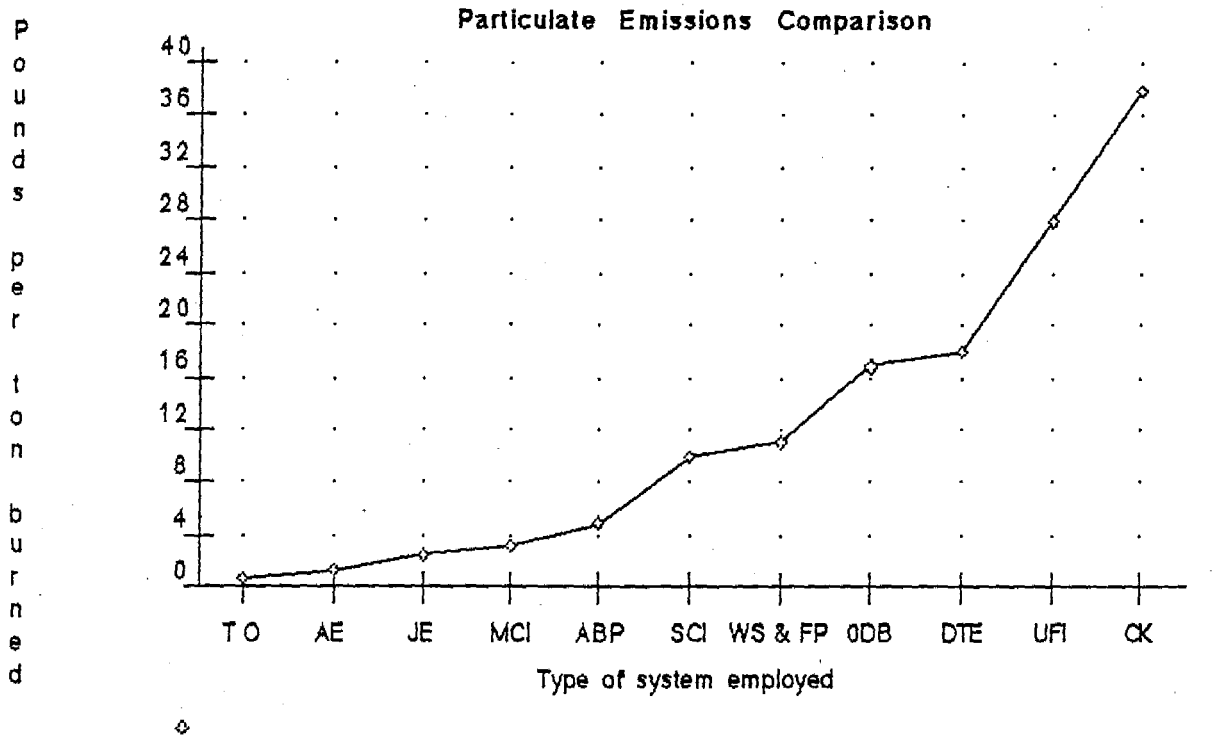
LIFE TIME RISKS FOR FAMILIAR ACTIVITIES

ACTIVITY	Life (70 year) risk Per million population
Cigarette Smoking	262,000.
All Cancers	196,000.
Mining and Quarries	65,500.
Construction	42,700.
Mountain Climbing	42,000.
Agriculture	42,000.
Police killed in the line of duty	15,400.
Air pollution (Eastern U S)	14,000.
Motor Vehicle accident (traveling)	13,900.
Police killed in the line of duty by felons	9,100.
Home Accidents	7,700.
Service and government	7,000.
Manufacturing	5,740.
Frequent airline traveler	3,500.
Pedestrian hit by motor vehicle	2,940.
Alcohol (light drinker)	1,400.
Electrocution	371.
Drinking water containing Chloroform at the max. EPA level	42.
Lightning	35.
Medical waste plant	1.
Drinking .05 liters of wine	1.
Traveling by canoe for 6 minutes	1.
Traveling by bicycle for 10 miles	1.
Traveling by car 30 miles	1.
Traveling by jet 6000	1.
Cancer from cosmic rays	1.

Adapted from health risk assessment for air emissions risks are from the federal EPA, North Carolina office, Wes Snoden (American Service Associates), and M. Wilson and E.A.C. Couch, *Science,* April 17, 1987.

To date there has never been a confirmed case a medical waste worker getting any disease from the waste. *Citizens Clearing House for Hazardous Waste,* July 1990.

CHART A PARTICULATE EMISSIONS COMPARISON



		lbs. per ton burned			lbs. per ton burned
T O=	Thermal Oxidizer	0.68	AE=	Auto Exhaust	1.25
JE=	Jet Exhaust	2.50	MCI=	Multi-chamber incinerator	3.00
ABP=	Asphalt Batch Plant	5.00	SCI=	Single-chamber " "	10.00
WS & FP=	Wood stove & FP	11.00	ODB=	Open dump Burning	17.00
DTE=	Diesel Truck Exhaust	17.00	UFI=	Uncontrolled fuel "	28.00
CK=	Cement Kiln	38.00			

EXHIBIT 19
DATE 2-10-93
HB 380

EXHIBIT 20
DATE 2-10-93
HB 380

Proposed Amendment to HB380

Prepared for Montana Hospital Association

before House Natural Resources Committee

February 10, 1993

page 8, line 8, after ".", insert:

"(7) This section does not apply to health care facilities licensed under Title 50, Chapter 5, Part 2."

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 380, 395

DATE 2/10/93 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
RACHAEL RALLESIRS	FAMILY (6)	380 X	
Pamela Carlson	FAMILY (3)	380 X	
Kathy Coleman	Self	380	
Stan Bradshaw	MT T.U.	HB 395	
David Ross	Audubon Leg. Fund	HB 380	
Mike Volesky	MT Assoc. of Cons. Dist.	HB 395	
Bob Lane	DFW&P		HB 395

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. _____

DATE 2/10/93 SPONSOR(S) _____

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Susan Callaghan 40 E. Broadway, Butte	MT. Power Co.	Y 395	
Ken Williams	MT Power/Entech	Amend 318 X	
Jerome Anderson	Holnam Inc.	IF AMENDED 380	
Dexter Busby	Montana Refining	Amended 318	
Dan White	Stillwater PGM Resources	318 Amend	
Janelle Fallan	MT Petroleum	318 Amend	
Michelle McClure	Fallon County		X HB 834
[redacted]	[redacted]	[redacted]	
John Augustus	Conoco	X	
Eric Finke	EPA	A	
Tom Dambert	Ash Grove Cement	amended 380	
Roger Thorvilson	DHES		
Jim Mockler	MT Coal Council	Amend 318 380 318	
Randy Wiseman	MATB		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

EXECUTIVE ACTION ON HB 380

Motion: **REP. FAGG MOVED HB 380 DO PASS.**

Motion/Vote: **REP. ORR** moved HB 380 be amended. **EXHIBIT 6**
Motion carried.

Motion: **REP. ORR** moved to amend HB 380. **EXHIBIT 7**

Discussion: The committee discussed the regulation of hospital incinerators, emission thresholds, and existing regulations. **REP. ORR** withdrew his amendment.

Motion: **REP. GILBERT** moved to amend HB 380. **EXHIBIT 8**

Discussion: The committee discussed the impact of the amendments on Montana's hospitals, and the burning of infectious waste.

Vote: The motion carried.

Motion/Vote: **REP. GILBERT MOVED HB 380 DO PASS AS AMENDED.**
Motion carried.

ADJOURNMENT

Adjournment: The meeting was adjourned at 5:30 pm.

DICK KNOX, Chairman

ROBERTA OPEL, Secretary

GAYLE CARPENTER, Transcriber

DK/ro

HOUSE STANDING COMMITTEE REPORT

February 15, 1993

Mr. Speaker: We, the committee on Natural Resources report that House Bill 380 (first reading copy -- white) do pass as amended .

Signed: _____
Dick Knox, Chair

And, that such amendments read:

1. Title, lines 10 through 13.
Strike: "PROHIBITING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FROM ISSUING AN AIR QUALITY PERMIT FOR INCINERATORS, BOILERS, AND INDUSTRIAL FURNACES UNTIL JUNE 1, 1994;"

2. Page 2, line 22 through page 3, line 3.
Strike: in their entirety

3. Page 4.
Following: line 18
Insert: "(9) "Modify" means any physical change in or change in the method of operation of an incinerator that increases the amount of any air pollutant emitted by the source or that results in the emission of any air pollutant not previously emitted."
Renumber: subsequent subsections

4. Page 6, line 1.
Following: "construct"
Strike: ","
Insert: "or"
Strike: ", or operate"

5. Page 6, lines 10 through 22.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

6. Page 8, line 9 through page 9, line 8.
Strike: sections 3 and 4 in their entirety
Renumber: subsequent sections

Committee Vote:

EXHIBIT
DATE 2-13-93
HB 380

Amendments to House Bill No. 380
1st Reading Copy

For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 13, 1993

1. Title, lines 10 through 13.
Strike: "PROHIBITING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FROM ISSUING AN AIR QUALITY PERMIT FOR INCINERATORS, BOILERS, AND INDUSTRIAL FURNACES UNTIL JUNE 1, 1994;"

2. Page 2, line 22 through page 3, line 3.
Strike: in their entirety

3. Page 8, line 9 through page 9, line 8.
Strike: sections 3 and 4 in their entirety
Renumber: subsequent sections

EXHIBIT 7
DATE 2-13-93
HB 380

Amendments to House Bill No. 380
1st Reading Copy

Requested by Rep. Orr
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 11, 1993

1. Page 8.
Following: line 8
Insert: "(7) This section does not apply to health care facilities licensed under Title 50, chapter 5, part 2. "

EXHIBIT 8
DATE 2-13-93
HB 380

Amendments to House Bill No. 380
1st Reading Copy

Requested by Rep. Gilbert
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff
February 13, 1993

1. Page 4.
Following: line 18
Insert: "(9) "Modify" means any physical change in or change in the method of operation of an incinerator that increases the amount of any air pollutant emitted by the source or that results in the emission of any air pollutant not previously emitted."
Renumber: subsequent subsections

2. Page 6, line 1.
Following: "construct"
Strike: ","
Insert: "or"
Strike: "or operate"

3. Page 6, lines 10 through 22.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0318	RICE, SHEILA		GENERAL REVISION OF THE CLEAN AIR ACT OF MONTANA			
	2/22	3/24		CONCUR AS AMENDED 3/27		3/30
HB0365	ROSE, JOHN		TETON RIVER BASIN CLOSURE			
	2/20	3/22		CONCUR AS AMENDED 3/23		3/24
HB0374	EWER, DAVID		WATER QUALITY ADMINISTRATIVE PENALTY			
	2/22	3/26		CONCUR AS AMENDED 3/27		3/30
HB0380	EWER, DAVID		AMEND AIR QUALITY PERMIT REQUIREMENTS FOR INCINERATORS AND BIF'S			
	3/01	3/05		CONCUR 3/5		3/06
HB0388	GILBERT, BOB		WATER QUALITY FEES			
	4/01	4/05		CONCUR 4/12		4/12
HB0393	WAGNER, DOUGLAS		REPLACING TIMBER STAND IMPROVEMENT FEES WITH A FOREST IMPROVEMENT FEE			
	2/16	3/10		CONCUR 3/10	TAXATION	3/12
HB0395	FOSTER, MIKE		BASIN CLOSURE -- UPPER MISSOURI RIVER			
	3/01	3/22		CONCUR AS AMENDED 3/23		3/24
HB0408	FAGG, RUSSELL		GENERALLY REVISE THE MONTANA SUBDIVISION AND PLATTING ACT			
	2/22	3/19		CONCUR 3/26		3/27
HB0417	TUNBY, ROLPH		AUTHORITY FOR ADMINISTRATIVE PENALTIES FOR UNDERGROUND TANK VIOLATIONS			
	2/20	3/08		CONCUR 3/12		3/16
HB0419	GRADY, ED		HAZARDOUS WASTE ADMINISTRATIVE PENALTY			
	3/01	3/26		CONCUR AS AMENDED 3/27		3/30
HB0423	GILBERT, BOB		CLARIFYING THE PETROLEUM TANK RELEASE BOARD'S HEARING REQUIREMENTS			
	2/20	3/24		CONCUR 3/26		3/27
HB0442	KNOX, DICK		GENERALLY REVISING THE METAL MINE RECLAMATION ACT			
	2/20	3/17	3/26	CONCUR AS AMENDED 3/29		3/30

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on March 5, 1993, at 3:07 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 164, HB 102, HB 380
Executive Action: HB 380, HB 164

HEARING ON HB 164

Opening Statement by Sponsor:

Representative Don Larson, HD 65, said HB 164 brings Montana's natural gas pipeline safety program into compliance with federal regulations, as required by federal law. He said Montana receives matching funds from the federal government for Public Service Commission (PSC) enforcement programs.

Closing by Sponsor:

Representative Schye closed.

HEARING ON HB 380

Opening Statement by Sponsor:

Representative David Ewer, HD 45, said HB 380 was drafted at the request of the Department of Health and Environmental Sciences (DHES). He said the bill affects new incinerators and new boilers. Rep. Ewer said HB 380 eliminates the 200 pound per hour input size permitting threshold. Rep. Ewer discussed the definition of solid waste and HB 380's impact on existing facilities. He stated the bill would affect existing facilities that change the nature, character or composition of emissions. He said the House amended the bill, taking out the language requesting a moratorium. He asked the Committee to refrain from amending the bill, because significant compromises have already been made.

Proponents' Testimony:

Jan Sensibaugh, DHES, read from written testimony (Exhibit #2).

Brian McNitt, Montana Environmental Information Center (MEIC), said HB 380 is a common sense bill, as it focuses on what comes out of the incinerator instead of what goes in or how much is burned. He said the amount of material burned in an incinerator does not have much impact on the amount of pollution emitted. Mr. McNitt added the change in the definition of solid waste is another reason MEIC supports the bill.

Glenn Rugg, Fallon County rancher, said HB 380 is important to Fallon county residents because of the potential location of Ross Electric in the area. He said the Fallon county sanitarian invited Ross Electric into the area. Mr. Rugg said Ross Electric maintains that it does not need any air quality or solid waste permits to incinerate PCB transformer oils. He distributed a letter from the Fallon county sanitarian to Bob Robinson, DHES director, stating that Ross Electric will begin operating in March (Exhibit #3). Mr. Rugg discussed the potential dangers of an accident at the site, noting that the nearest response units are in Rapid City, South Dakota and in Billings. He said HB 380 would force new facilities to comply with the same laws that apply to other industries in Montana. Mr. Rugg also distributed an article he wrote discussing Ross Electric's infractions (Exhibit #4).

Tom Daubert, representing Ash Grove Cement, said HB 380 functionally makes no change for his client, as Ash Grove already operates under an air quality permit. He said Ash Grove has

applied for a modification in its permit and there has never been any dispute about the applicability of HB 380 to companies of Ash Grove's size. He said what is burned is not as important as the quality of the incineration process and pollution control. Mr. Daubert said it is important that DHES be able to study even the smallest incineration project.

William Lawrence, representing Sure-Way Systems, read from written testimony (Exhibit #5). Mr. Lawrence signed the visitor register as an opponent to HB 380, but testified during proponents' testimony.

Dave Ross, Montana Audubon Legislative Fund, submitted written testimony (Exhibit #6).

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Grosfield asked for the date of the letter the Fallon county sanitarian wrote to Bob Robinson (Exhibit #3). Mr. Robinson said he did not know the exact date, but that the letter arrived within the last two months. Referring to Page 7, lines 7 and 8, Senator Grosfield asked Ms. Sensibaugh whether a permit would be needed if a change in an incinerator alters the emissions. Ms. Sensibaugh said the bill would affect new incinerators and existing incinerators that change what they burn.

Senator Grosfield asked about the definition of an incinerator and wondered if HB 380 would affect his burning garbage in 55 gallon drums. Ms. Sensibaugh said 55 gallon drums are regulated by open burning regulations and do not qualify as incinerators under HB 380.

Senator Grosfield asked if there are any guidelines on what type of rules the Board of Health should establish. Charles Homer, environmental specialist, DHES Air Quality Bureau, said the rules would be divided into two sections: 1) permitting requirements, including a health risk assessment, negligible risk definitions, and other information required in the permitting process, and; 2) a determination of whether or not there should be specific initial limitations or operational requirements placed on specific types of incinerators. Senator Grosfield asked why Boilers and Industrial Furnaces (BIF) rules do not cover the incinerators affected by HB 380. Mr. Homer said HB 380 was meant to cover incinerators not handled in BIF rules, such as Ross Electric, hazardous waste incinerators, and medical waste incinerators.

Senator McClernan asked if the language on page 7 would affect a Billings power plant. Mr. Homer said that project is a fuel burning project and would be covered under the fuel burning definition.

Senator Bianchi asked if the medical waste incinerator project near Ringling has been permitted. Mr. Homer said an air quality permit has been issued to Western Recovery for its incinerator, but added the permit requires construction within 2 years. If Western Recovery does not begin construction within that time period, the company must apply for another permit, and would be subject to the provisions of HB 380.

Senator Swysgood asked Representative Ewer if HB 380 would stop Ross Electric. Rep. Ewer deferred the question to DHES. Tim Baker, attorney, DHES Air Quality Bureau said DHES contends that 75-22-215 MCA applies to Ross Electric and requires the company to obtain an air quality permit. He said Ross Electric has argued that it is not subject to the requirements of the statute, claiming that the facility would be combusting less than 200 pounds of solid waste per hour. Ross also believes it is exempt from the air quality requirements because the company is a recycling operation. Mr. Baker said DHES believes Ross Electric is currently subject to 75-22-215, but passage of HB 380 would strengthen the Department's arguments.

Senator Swysgood asked how long it would take Ross Electric to build its facility in Fallon county. Mr. Baker said Ross Electric's start-up date has been a moving target for months, but stated the incinerator would be operational within 48 hours of when the company moved it on site.

Senator Swysgood asked if the definition of incinerator excludes heaters that burn used oil. Mr. Homer stated those heaters generally would not be big enough to need a permit, and added DHES does not intend to regulate waste oil space heaters under HB 380. Mr. Homer said some other small operations, such as pet and human remains crematoriums, would be affected by HB 380 and may require some analysis.

Senator Swysgood stated the fiscal note indicates no impact on the Department. He asked where money collected from the permit application fee would go. Ms. Sensibaugh said the fiscal note reflects any costs to the Department. She said the fee is based on cost per ton of actual emissions, with a minimum fee of $250 per year.

Senator Grosfield asked how much a hospital would have to pay to receive a permit. Ms. Sensibaugh said DHES appears before the Board of Health every year to set the fees and the fee schedule. She stated DHES has the leeway to set the fee schedule differently for different sources. She reiterated that the fees are based on actual emissions, so small incinerators like hospitals and grocery stores would most often only have to pay

the minimum fee of $250.

Senator Grosfield asked Ms. Sensibaugh to respond to Mr. Lawrence's testimony. Ms. Sensibaugh stated there is validity to the argument that uncontrolled existing incinerators should be looked at, but including existing incinerators would be a major policy change to the current statute. She added if those incinerators were included, it would be difficult and costly to bring them up to current control technology standards. Ms. Sensibaugh stressed that if an existing incinerator does not change its operations, it would not be affected by HB 380.

Senator Weeding asked Mr. Lawrence to comment on his business. Mr. Lawrence said Sure-Way has built the business client by client, convincing smaller hospitals around the state that they should retire their antique incinerators. He said incinerators should be given a 2 year period to upgrade their systems or shut down.

Senator Bianchi asked where Sure-Way's incinerator is located. Mr. Lawrence said the company is planning to build in the Deer Lodge area.

Closing by Sponsor:

Representative Ewer said HB 380 would only be as good as the DHES staff and urged the Committee to concur in HB 380.

EXECUTIVE ACTION ON HB 380

Motion:

Senator Weeding MOVED HB 380 BE CONCURRED IN.

Discussion:

Senator Grosfield said he is concerned about the types of incinerators that would be included in HB 380. He added he does not want to see money taken from the smaller communities and given to DHES. Ms. Sensibaugh stated DHES would recommend to the Board of Health a different fee schedule and a low administrative fee for the small incinerators. She said administrative fees are based on the amount of staff time needed to process permits.

Senator Swysgood stated he has no problem with the bill's intent, but it seems to be broad in coverage. He warned that with more regulation, DHES's staff may have to be increased, which will cost the state money. Senator Swysgood said he is also concerned about the burden that would be placed on users.

Senator Grosfield said he will support the motion, but is uncomfortable granting DHES broad authority to set fees.

Vote:

The motion CARRIED with Senator Keating voting NO.

EXECUTIVE ACTION ON HB 164

Motion/Vote:

Senator Grosfield MOVED HB 614 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 4:18 p.m.

Don Bianchi
SENATOR DON BIANCHI, Chair

Leanne Kurtz
LEANNE KURTZ, Secretary

DB/lk

SENATE STANDING COMMITTEE REPORT

March 5, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 380 (first reading copy -- blue), respectfully report that House Bill No. 380 be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

M- Amd. Coord.
___ Sec. of Senate

Hockett
Senator Carrying Bill

501634SC.Sma

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 3/9/95
BILL NO. HB 380

TESTIMONY ON HB 380

Mr. Chairman, members of the committee, my name is Jan Sensibaugh and I represent the Department of Health and Environmental Sciences. HB 380 makes changes to the department's air quality permitting authority for solid and hazardous waste incinerators to solve some of the problems experienced regarding permitting of incineration facilities under this statute. The changes include: elimination of the 200 lb/hour input size permitting threshold; definitions of incinerator, solid waste and hazardous waste; and specific reference to boilers and industrial furnaces.

The reason for eliminating the 200 lb/hour input size and requiring permitting of all new incinerators is to assure that all incineration projects are subject to an appropriate level of review before they are constructed. The department has found that there are differences of opinion on how to apply the 200 lb/hour limit and that facilities are designing their incinerators, including those for medical waste, to fall just below the 200 lb/hour input size to avoid air quality permitting. Since the public is sensitive about impacts on public health and the environment from incinerators, the department must be able to analyze potential air quality impacts from all proposed incinerators so that concerns raised by the public are adequately responded to.

Since elimination of the size cut-off will bring under regulation small incinerators of a similar type, such as grocery

store incinerators, the legislation includes language allowing the department to issue general permits for specific size and type categories of incinerators. In this way once a general permit has been developed, a facility would only need to demonstrate that they meet the requirements for a general permit and would not need to go through extensive individual permitting review. The general permit requirements would most likely include among other things size restrictions, and waste and emission type limitations.

In order to clarify which sources these permitting requirements apply to, definitions of incinerator, solid waste and hazardous waste have been included in the amendments.

The definition of incinerator focuses on the type of equipment and the combustion process used.

The solid waste definition is similar to but more encompassing than that used in other solid waste statutes. Reference to marketable byproducts is omitted since the reason for incineration is not applicable to permit review in relation to protecting air quality, public health and the environment.

The definition of hazardous waste is the same as that used in the hazardous waste statute.

Although the department believes that boilers and industrial furnaces are included under the existing statute, to eliminate any

EXHIBIT #2
DATE 3-5-93
HB-380

confusion, the changes specifically include review of these facilities.

Amendments to address concerns from hospitals on application of this statute to existing incinerators were added to clarify that this statute does not apply to existing incinerators unless they change the type and amount of pollutants they are emitting from their designed or permitted levels.

HB 380 clarifies the department's permitting authority for solid and hazardous waste incinerators and boilers and industrial furnaces and allows for development of a program that will protect public health and the environment.

Thank you for the opportunity to comment. I would be happy to answer any questions.

Fallon County Health Department
Office of the Sanitarian 406•778•3
Richard A Menger, R.S.
Box 667 Baker, Montana 59313

HB 380

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3/5/93
BILL NO. HB 380

Bob Robinson, Director
Environmental Sciences Division
Montana Department of Health
Cogswell Building
Helena, Montana

Dear Mr. Robinson:

First, congratulations on your appointment as director of the Environmental Sciences. I'm sure you will find your position both challenging and rewarding. There are many environmental issues that Montana will have to face during Marc Racicot's term as governor. I look forward to working with you for the betterment of Montana.

There are two issues concerning Fallon County that are currently being discussed under your office. The first deals with landfarming contaminated soils, usually from leakage from petroleum tanks permitted under the Underground Tank Storage Program. I have requested an amendment to our new landfill license to landfarm these soils and then use them for coverage of deposited garbage. Fees from producers would be minimal (covering expenses during remediation and testing only), since we will use the remediated soils afterwards. The SWB has informed me that they are considering deriving additional fees from these soils in addition to solid waste fees already collected. This is ludicrous. The SWB would have to consider Montana soil solid waste! In addition, one would think that the SWB and the UST could work together to make the remediation process involved with these soils as simple and convenient as possible. Fallon County is adamantly opposed to any additional state imposed tipping fees or tonnage fees concerning these soils.

Second, you may be aware of the background surrounding Ross Electric in Fallon County, and the Air Quality Bureau's and the SWB's determinations concerning this operation. You may want to refer to my previous correspondence to your office and these bureaus. This firm will be ready for start-up sometime around March of this year. I have been keeping EPA and Jim Hughes in the Billings Air Quality office informed of any changes throughout this process. Since the criteria for an air quality permit does not apply to this

site operation and the SWB's determination of these transformers being classified as solid waste is under severe attack, as well as the state's solid waste moratorium, you may wish to discuss these with me. In addition, this office respectfully requests that representatives from Air Quality and Solid Waste be present during start-up of this business in Fallon County. This office has worked closely with EPA and Gary and Bob Ross on a work plan designed to cure any fears the public (both inside and outside Fallon County) may have concerning this operation.

If at any stage your office needs further information or has any comment, please feel free to contact this office or the Fallon County Commissioners. Again, I look forward to working with you to protect this state's great natural environment.

Sincerely,

Richard A. Menger, MST, R.S.

cc: Jim Hughes, Air Quality Bureau, Billings Regional Office
Fallon County Commissioners, Baker

H.B. 380

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3/5/93
BILL NO. HB 380

April By Glen T. Rugg

During its stay in Washington State, Ross Electric has repeatedly been fined by Washington State Department of Ecology, has generated a Superfund Site that federal taxpayers must pay for, and has refused to acknowledge any wrong doing or accept any responsibility for the damage it has caused.

From 1972 to September 1983 Ross Electric operated on Coal Creek. In February of 1983, due to heavy contamination by Ross Electric and two other companies, the Washington State Department of Ecology issued an order to Ross Electric as operator and Lewis County Public Utility District as owner to investigate and clean up the site.

Ross Electric moved their incinerator to the Logan Hill in 1983, and terminated their lease at Coal Creek. In defiance of both the Washington State Department of Ecology and the Federal Government, which had classified it as a Superfund Site, Ross Electric refused to accept any responsibility for the contammation at Coal Creek or pay anything toward the cost of cleaning it up.

In January of 1985 the Environmental Protection Agency—it isn't just an over zealous Department of Ecology as Ross Electric would have it that is giving them so much trouble— fined Ross Electric $23,000 for burning waste oil with concentrations of PCBs at 94 ppm. According to EPA regulations, they were only allowed to incinerate contaminated waste up to 50 ppm.

On August 11, 1986, the Washington Department of Ecology fined Ross Electric $25,000 for two different spills of incinerator ash, falsifying incinerator reports, and leaving hazardous containers unlabeled.

In August 1986 Ross Electric was caught dumping ash from their incinerator at the Centralia, Washington landfill. The Washington Department of Ecology fined Ross Electric $75,000 for this. Ross Electric protested the penalty, and Ross Electric and the Department of Ecology settled for $48,000, with $27,000 deferred, if they had no further Class 1 violations. But when Ross Electric made further Class 1 violations it made them "a high priority violator," and the $27,000 deferment was made payable. Ross Electric is appealing.

In August and November of 1990, the Department of Ecology fined Ross Electric $90,000. This time because Ross Electric had operated without a temperature probe from August 2 to August 27. (The probe is essential to determine if the temperature is high enough to destroy all the PCBs.) Besides that, their record keeping was so disorganized that the Department of Ecology could not determine whether the oil they were incinerating was under 50 ppm.

The Department of Ecology gave Ross Electric an ultimatuminMay of 1991. Either Ross Electric had to start complying with the law or submit a plan for closing their plant down and disposing of all the hazardous wastes that had accumulated at their site. Ross Electric has refused to draw up a plain and to provide sufficient financial guarantees to assure that it is carried out. Now they are attempting to move into Fallon County.

As this lengthy list of penalties and court actions shows, Ross Electric has never been in compliance with the laws of the State of Washington. They have provoked several actions by the EPA. And they have refused to accept responsibility for the damage they have done or the costs they have forced on the taxpayer. There is nothing in their history to suggest that they have changed their ways or that they will do any better in Fallon County.

EXHIBIT NO. 5
DATE 3/5/93
BILL NO. HB 340

Mr. Chairman, members of the committee, for the record, my name is William Lawrence. I am with Sure-Way Systems, Montana, Inc., a small Montana owned and operated business designed specifically for the pick-up, hauling and destruction of medical waste. For almost three years Sure-Way has served the Montana medical community, growing in that time to enroll almost two hundred clients through the state. While our service area is the entire State of Montana, we are proud of the fact that many of our patrons are from Montana's smaller communities. These clients are reached by Sure-Way when larger companies choose to set up service only in the major population areas.

In order to comply with state and federal requirement for the safe handling and destruction of medical waste, we find our business governed by several state and federal agencies, such as the State Department of Health and Environmental Sciences, DOT, OSHA, CDC, EPA, Department of Air Quality, Department of Solid and Hazardous Waste, as well as many City/County Health Departments.

Our ongoing goal is to provide for our patrons the safest, cleanest, and most efficient means of meeting their medical waste needs in the most affordable way. After much research, we have concluded that because of the nature of medical waste, the best, safest, cleanest, most efficient, as well as most cost effective means of destruction is incineration. For several forms of medical waste, such as tissue (pathologicals) or chemotherapy waste, the only recomended method of destruction is incineration. By incinerating all our medical waste, the need for sorting the special forms of waste is not necessary. This is more convenient and cost effective for our clients, and allows for a much safer, cleaner, more efficeient, affordable method of destruction.

Through much effort, we have contributed to the shutting down of more than ten old, out-dated, polluting antique incinerators throughout the state. Many more of these ancient units can and will be retired if a safe, cost-effective alternative is available for the facilities still using them.

All Montanans have a responsiblity to help keep the rising health care cost under control. By handling Montana's medical waste in-state instead of shipping many miles away, it is possible to keep biomedical waste disposal affordable to the Montana health care community.

HB 380 now before you works on the premise that it will clean up the air in Montana. HB 380 requires **all** new incinerator construction to be permitted and licensed, regardless of size. HB 380 as amended does **not** apply to incinerators constructed before this Bill **regardless of how dangerous or polluting they may be.** In fact, **HB 380 discourages up grading of established incinerators, because if improved, these older units will then be required to meet the new regulations.** If cleaner air is the true motivation behind this legistation, the bill should include the real polluters, those old, out-dated incinerators that presently operate under no air quality requirements. Currently established units should be required to meet the same requirements as new license applicants: clean up or shut down.

HB 380 as written is as counter-productive to cleaner air as it is unfair to new licensees. If this legislation is really necessary, it should address real air quality problems instead of taking the easy way out by only attacking incinerators that are already inherently cleaner burning than those units already polluting the skies of Montana and the lungs of Montana residents.

Montana Audubon Council

State Office: P.O. Box 595 • Helena, MT 59624 • (406) 443-3949

Chapters:

Bitterroot Audubon
Bitterroot Valley

Flathead Audubon
Flathead Valley

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Last Chance Audubon
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Rosebud Audubon
Miles City

Sacajawea Audubon
Bozeman

Upper Missouri
Breaks Audubon
Great Falls

Yellowstone Valley
Audubon
Billings

Mr. Chairman and Committee members:

My name is Dave Ross, and I represent the Montana Audubon Legislative Fund. We support HB 380. With the current statute, incinerators burning 200 lbs. or less/hr. do not have to comply to any form of a permit regulation. This has created an opportunity for industry to continue to burn large quantities of waste by simply constructing incinerators just below the 200 lb. limit.

Major point to remember: Industry can still burn excessive quantities of waste with these smaller incinerators, just not as quickly or efficiently as industries using the larger incinerators.

The dangers that these 200 lb. incinerators can cause to the people and the environment of Montana are no less than those caused by larger incinerators. We at the Audubon, see that the current statute creates a dangerous opportunity for industry to harm the state's air quality. We support HB 380 and the requirement that it demands for all incinerators to obtain an air quality permit.

Thank you,

David H. Ross

David H. Ross

...AL RESOURCES
EXHIBIT NO. 6
DATE 3/5/93
BILL NO. HB 380

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